

HB 777

2006

1 A bill to be entitled

2 An act relating to telephone solicitation; amending s.
3 501.059, F.S.; defining the terms "cellular telephone,"
4 "electronic serial number," and "mobile identification
5 number"; prohibiting a telephone solicitor from making a
6 telephonic sales call to any telephone number assigned to
7 a cellular telephone service without the prior consent of
8 the subscriber to the cellular telephone service; amending
9 ss. 501.603 and 648.44, F.S., conforming cross-references;
10 providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Section 501.059, Florida Statutes, is amended
15 to read:

16 501.059 Telephone solicitation.--

17 (1) As used in this section:

18 (a) "Telephonic sales call" means a call made by a
19 telephone solicitor to a consumer, for the purpose of soliciting
20 a sale of any consumer goods or services, or for the purpose of
21 soliciting an extension of credit for consumer goods or
22 services, or for the purpose of obtaining information that will
23 or may be used for the direct solicitation of a sale of consumer
24 goods or services or an extension of credit for such purposes.

25 (b) "Consumer goods or services" means any real property
26 or any tangible or intangible personal property which is
27 normally used for personal, family, or household purposes,
28 including, without limitation, any such property intended to be

HB 777

2006

29 attached to or installed in any real property without regard to
30 whether it is so attached or installed, as well as cemetery lots
31 and timeshare estates, and any services related to such
32 property.

33 (c) "Unsolicited telephonic sales call" means a telephonic
34 sales call other than a call made:

35 1. In response to an express request of the person called;

36 2. Primarily in connection with an existing debt or
37 contract, payment or performance of which has not been completed
38 at the time of such call;

39 3. To any person with whom the telephone solicitor has a
40 prior or existing business relationship; or

41 4. By a newspaper publisher or his or her agent or
42 employee in connection with his or her business.

43 (d) "Commission" means the Florida Public Service
44 Commission.

45 (e) "Telephone solicitor" means any natural person, firm,
46 organization, partnership, association, or corporation, or a
47 subsidiary or affiliate thereof, doing business in this state,
48 who makes or causes to be made a telephonic sales call,
49 including, but not limited to, calls made by use of automated
50 dialing or recorded message devices.

51 (f) "Consumer" means an actual or prospective purchaser,
52 lessee, or recipient of consumer goods or services.

53 (g) "Merchant" means a person who, directly or indirectly,
54 offers or makes available to consumers any consumer goods or
55 services.

56 (h) "Doing business in this state" refers to businesses

HB 777

2006

57 who conduct telephonic sales calls from a location in Florida or
58 from other states or nations to consumers located in Florida.

59 (i) "Department" means the Department of Agriculture and
60 Consumer Services.

61 (j) "Electronic serial number" means the unique numerical
62 algorithm that is programmed into the microchip of each cellular
63 telephone by the manufacturer and is vital to the successful
64 operation and billing of the telephone.

65 (k) "Mobile identification number" means the cellular
66 telephone number assigned to the cellular telephone by the
67 cellular telephone carrier.

68 (l) "Cellular telephone" means a communication device
69 containing a unique electronic serial number that is programmed
70 into its computer chip by its manufacturer and whose operation
71 is dependent on the transmission of that electronic serial
72 number, along with a mobile identification number that is
73 assigned by the cellular telephone carrier, in the form of radio
74 signals through cell sites and mobile switching stations.

75 (2) Any telephone solicitor who makes an unsolicited
76 telephonic sales call to a residential, mobile, or telephonic
77 paging device telephone number shall identify himself or herself
78 by his or her true first and last names and the business on
79 whose behalf he or she is soliciting immediately upon making
80 contact by telephone with the person who is the object of the
81 telephone solicitation.

82 (3) A telephone solicitor may not make any telephonic
83 sales call, other than a call made with the prior written
84 express consent of the called party, to any telephone number

HB 777

2006

85 assigned to a cellular telephone service or any service for
 86 which the called party is charged for the call.

87 (4)~~(3)~~(a) Any residential, mobile, or telephonic paging
 88 device telephone subscriber desiring to be placed on a "no sales
 89 solicitation calls" listing indicating that the subscriber does
 90 not wish to receive unsolicited telephonic sales calls may
 91 notify the department and be placed on that listing upon receipt
 92 by the department of a \$10 initial listing charge. This listing
 93 shall be renewed by the department annually for each consumer
 94 upon receipt of a renewal notice and a \$5 assessment.

95 (b) The department shall update its "no sales solicitation
 96 calls" listing upon receipt of initial consumer subscriptions or
 97 renewals and provide this listing for a fee to telephone
 98 solicitors upon request.

99 (c) All fees imposed under ~~pursuant to~~ this section shall
 100 be deposited in the General Inspection Trust Fund for the
 101 administration of this section.

102 (5)~~(4)~~ A ~~No~~ telephone solicitor may not ~~shall~~ make or
 103 cause to be made any unsolicited telephonic sales call to any
 104 residential, mobile, or telephonic paging device telephone
 105 number if the number for that telephone appears in the then-
 106 current quarterly listing published by the department. Any
 107 telephone solicitor or person who offers for sale any consumer
 108 information which includes residential, mobile, or telephonic
 109 paging device telephone numbers, except directory assistance and
 110 telephone directories sold by telephone companies and
 111 organizations exempt under s. 501(c)(3) or (6) of the Internal
 112 Revenue Code, shall screen and exclude those numbers which

HB 777

2006

113 appear on the division's then-current "no sales solicitation
114 calls" list. This subsection does not apply to any person
115 licensed pursuant to chapter 475 who calls an actual or
116 prospective seller or lessor of real property when such call is
117 made in response to a yard sign or other form of advertisement
118 placed by the seller or lessor.

119 (6)~~(5)~~(a) A contract made pursuant to a telephonic sales
120 call is not valid and enforceable against a consumer unless made
121 in compliance with this subsection.

122 (b) A contract made pursuant to a telephonic sales call:
123 1. Shall be reduced to writing and signed by the consumer.
124 2. Shall comply with all other applicable laws and rules.
125 3. Shall match the description of goods or services as
126 principally used in the telephone solicitations.

127 4. Shall contain the name, address, and telephone number
128 of the seller, the total price of the contract, and a detailed
129 description of the goods or services being sold.

130 5. Shall contain, in bold, conspicuous type, immediately
131 preceding the signature, the following statement:

132 "You are not obligated to pay any money unless you sign
133 this contract and return it to the seller."

134 6. May not exclude from its terms any oral or written
135 representations made by the telephone solicitor to the consumer
136 in connection with the transaction.

137 (c) ~~The provisions of~~ This subsection does ~~de~~ not apply to
138 contractual sales regulated under other sections of the Florida
139 Statutes, or to the sale of financial services, security sales,
140 or sales transacted by companies or their wholly owned

HB 777

2006

141 subsidiaries or agents, which companies are regulated by chapter
 142 364, or to the sale of cable television services to the duly
 143 franchised cable television operator's existing subscribers
 144 within that cable television operator's franchise area, or to
 145 any sales where no prior payment is made to the merchant and an
 146 invoice accompanies the goods or services allowing the consumer
 147 7 days to cancel or return without obligation for any payment.

148 (7)~~(6)~~(a) A merchant who engages a telephone solicitor to
 149 make or cause to be made a telephonic sales call may ~~shall~~ not
 150 make or submit any charge to the consumer's credit card account
 151 or make or cause to be made any electronic transfer of funds
 152 until after the merchant receives from the consumer a copy of
 153 the contract, signed by the purchaser, which complies with this
 154 section.

155 (b) A merchant who conducts a credit card account
 156 transaction under ~~pursuant to~~ this section shall be subject to
 157 the provisions of s. 817.62.

158 (c) ~~The provisions of~~ This subsection does ~~de~~ not apply to
 159 a transaction:

160 1. Made in accordance with prior negotiations in the
 161 course of a visit by the consumer to a merchant operating a
 162 retail business establishment which has a fixed permanent
 163 location and where consumer goods are displayed or offered for
 164 sale on a continuing basis;

165 2. In which the consumer may obtain a full refund for the
 166 return of undamaged and unused goods or a cancellation of
 167 services notice to the seller within 7 days after receipt by the
 168 consumer, and the seller will process the refund within 30 days

HB 777

2006

169 after receipt of the returned merchandise by the consumer;

170 3. In which the consumer purchases goods or services
 171 pursuant to an examination of a television, radio, or print
 172 advertisement or a sample, brochure, or catalog of the merchant
 173 that contains:

174 a. The name, address, and telephone number of the
 175 merchant;

176 b. A description of the goods or services being sold; and

177 c. Any limitations or restrictions that apply to the
 178 offer; or

179 4. In which the merchant is a bona fide charitable
 180 organization or a newspaper as defined in chapter 50.

181 (8)~~(7)~~(a) A ~~No~~ person may not ~~shall~~ make or knowingly
 182 allow a telephonic sales call to be made if the ~~such~~ call
 183 involves an automated system for the selection or dialing of
 184 telephone numbers or the playing of a recorded message when a
 185 connection is completed to a number called.

186 (b) This subsection does not prohibit ~~Nothing herein~~
 187 ~~prohibits~~ the use of an automated telephone dialing system with
 188 live messages if the calls are made or messages given solely in
 189 response to calls initiated by the persons to whom the automatic
 190 calls or live messages are directed or if the telephone numbers
 191 selected for automatic dialing have been screened to exclude any
 192 telephone subscriber who is included on the department's then-
 193 current "no sales solicitation calls" listing or any unlisted
 194 telephone number, or if the calls made concern goods or services
 195 that have been previously ordered or purchased.

196 (9)~~(8)~~ The department shall investigate any complaints

HB 777

2006

197 received concerning violations of this section. If, after
198 investigating any complaint, the department finds that there has
199 been a violation of this section, the department or the
200 Department of Legal Affairs may bring an action to impose a
201 civil penalty and to seek other relief, including injunctive
202 relief, as the court deems appropriate against the telephone
203 solicitor. The civil penalty may ~~shall~~ not exceed \$10,000 per
204 violation and shall be deposited in the General Inspection Trust
205 Fund if the action or proceeding was brought by the department,
206 or the Legal Affairs Revolving Trust Fund if the action or
207 proceeding was brought by the Department of Legal Affairs. This
208 civil penalty may be recovered in any action brought under this
209 part by the department, or the department may terminate any
210 investigation or action upon agreement by the person to pay a
211 stipulated civil penalty. The department or the court may waive
212 any civil penalty if the person has previously made full
213 restitution or reimbursement or has paid actual damages to the
214 consumers who have been injured by the violation.

215 (10)~~(9)~~(a) In any civil litigation resulting from a
216 transaction involving a violation of this section, the
217 prevailing party, after judgment in the trial court and
218 exhaustion of all appeals, if any, shall receive his or her
219 reasonable attorney's fees and costs from the nonprevailing
220 party.

221 (b) The attorney for the prevailing party shall submit a
222 sworn affidavit of his or her time spent on the case and his or
223 her costs incurred for all the motions, hearings, and appeals to
224 the trial judge who presided over the civil case.

HB 777

2006

225 (c) The trial judge shall award the prevailing party the
 226 sum of reasonable costs incurred in the action plus a reasonable
 227 legal fee for the hours actually spent on the case as sworn to
 228 in an affidavit.

229 (d) Any award of attorney's fees or costs shall become a
 230 part of the judgment and subject to execution as the law allows.

231 (e) In any civil litigation initiated by the department or
 232 the Department of Legal Affairs, the court may award to the
 233 prevailing party reasonable attorney's fees and costs if the
 234 court finds that there was a complete absence of a justiciable
 235 issue of either law or fact raised by the losing party or if the
 236 court finds bad faith on the part of the losing party.

237 ~~(11)(10)~~ The commission shall by rule ensure that
 238 telecommunications companies inform their customers of the
 239 ~~provisions of~~ this section. The notification may be made by:

240 (a) Annual inserts in the billing statements mailed to
 241 customers; and

242 (b) Conspicuous publication of the notice in the consumer
 243 information pages of the local telephone directories.

244 Section 2. Subsection (1) of section 501.603, Florida
 245 Statutes, is amended to read:

246 501.603 Definitions.--As used in this part, unless the
 247 context otherwise requires, the term:

248 (1) "Commercial telephone solicitation" means:

249 (a) An unsolicited telephone call to a person initiated by
 250 a commercial telephone seller or salesperson, or an automated
 251 dialing machine used in accordance with the provisions of s.
 252 501.059(8) ~~s. 501.059(7)~~ for the purpose of inducing the person

HB 777

2006

- 253 to purchase or invest in consumer goods or services;
- 254 (b) Other communication with a person where:
- 255 1. A gift, award, or prize is offered; or
- 256 2. A telephone call response is invited; and
- 257 3. The salesperson intends to complete a sale or enter
- 258 into an agreement to purchase during the course of the telephone
- 259 call; or
- 260 (c) Other communication with a person which represents a
- 261 price, quality, or availability of consumer goods or services
- 262 and which invites a response by telephone or which is followed
- 263 by a call to the person by a salesperson.

264

265 For purposes of this section, "other communication" means a

266 written or oral notification or advertisement transmitted

267 through any means. Also, for purposes of this section, "invites

268 a response by telephone" does not mean the mere listing or

269 including of a telephone number in a notification or

270 advertisement.

271 Section 3. Paragraph (c) of subsection (1) of section

272 648.44, Florida Statutes, is amended to read:

273 648.44 Prohibitions; penalty.--

274 (1) A bail bond agent or temporary bail bond agent may

275 not:

276 (c) Initiate in-person or telephone solicitation after

277 9:00 p.m. or before 8:00 a.m., in the case of domestic violence

278 cases, at the residence of the detainee or the detainee's

279 family. Any solicitation not prohibited by this chapter must

280 comply with the telephone solicitation requirements in ss.

HB 777

2006

281 501.059(2) and (5) ~~(4)~~, 501.613, and 501.616(6).

282 Section 4. This act shall take effect July 1, 2006.